UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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WHITEBOX RELATIVE VALUE PARTNERS, LP, ET AL.,

Plaintiffs,

v. 20 CV 7143 (GBD)

TRANSOCEAN LIMITED, ET AL.,

Defendants.

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New York, N.Y.
September 3, 2020
2:00 p.m.

Before:

HON. GEORGE B. DANIELS,

District Judge

APPEARANCES

MILBANK LLP
Attorneys for Plaintiffs
BY: ANTONIA APPS

WHITE & CASE LLP
Attorneys for Defendants
BY: GLENN KURTZ

(Case called)

THE COURT: This is Judge Daniels on the line.

MS. APPS: Judge Daniels, this is Antonia Apps, of Milbank, on behalf of Suns Advised by Wyckoff Advisers LLC.

Good afternoon, your Honor.

THE COURT: Good afternoon.

MR. KURTZ: Good afternoon, your Honor.

Glenn Kurtz, from White & Case, and I am representing the Transocean defendants in the matter.

THE COURT: Let me hear first from the plaintiff with regard to the preliminary injunction and temporary restraining order that they're requesting.

MS. APPS: Yes, your Honor.

The defendant companies have an open (inaudible) of outstanding notes set to close tomorrow at midnight. The offering memorandum pursuant to which these notes have been offered contains material misstatements and admissions in violation of the securities laws.

Our core claim is the defendants have engaged in a series of transactions culminating in this exchange offer which constitute breaches of outstanding indentures and then lied about that in their offering memorandum.

Now, plaintiffs have actually also filed -- note holders I should say -- accounting for approximately 25 percent of one of the bonds have already filed a notice of default with

the company but that's a breach of contract claim that will take months to resolve. That is not, I emphasize, the nature of the claim that we are bringing now. We are bringing a securities claim. Regardless of whether or not we prevail down the road on the contract claim, the problem now is that there is a false offering memorandum that will cause harm to the plaintiffs' interests if it is allowed to close without the relief sought.

And I want to emphasize the economic impact of the misstatements, your Honor, is in the realm of $1.5 million. It alters materially the economics of the deal that the defendants have put forward. I want to emphasize, your Honor, the extremely limited relief that we are seeking on an emergency basis. We're asking no more that the company issue a corrective disclosure, that they keep the offer open for a reasonable amount of time we've proposed two weeks but naturally we would defer to the Court so that an appropriate amount of time and allow holders who have already tendered to withdraw their notes. In doing that it will give all investors full and truthful disclosure in the offering memorandum and an opportunity to make the right investment decision based on that full and truthful disclosure.

On the other hand, keeping an exchange for offer open for an additional few weeks will not cause any harm to the company defendants. And I don't hear the company defendants

saying so in the letter that they've submitted a few hours before this hearing.

THE COURT: Well, what is it that you want them to do? What do you want them to say in this corrective disclosure?

MS. APPS: Well, your Honor, our position is that the underlying, the provisions in the indentures that requires them to issue a guarantee when they've engaged in an active transfer as they have, entitles us, as I said, engages in the guarantee. That provision in the indenture is unambiguous. It requires on its face that one and a half billion dollars guarantee given to us over a certain group of subsidiaries. We think the company should come clean and say that they owe us that guarantee and that will mean that an additional $1.5 billion guarantee attaches to assets of certain subsidiaries.

THE COURT: Well, I don't understand what you are trying to protect in terms of injury to the plaintiff other than your guarantee.

MS. APPS: Well, here's a difference, your Honor, the current situation is holders of these particular notes. We've called them in the papers senior existing guaranteed notes but I'll just call them for the moment the existing notes. Holders of the exist notes are structurally senior to billions of dollars of other debt which doesn't have (inaudible) of this guarantee and --

THE COURT: So, what is that? Why do you have

standing to ask for instructive relief on their behalf?

MS. APPS: Because we own portion of those bonds.

THE COURT: OK.

MS. APPS: Here is the problem. If the false -- here's the thing. All of the other bond holders are reading this false offering memorandum and getting the wrong picture of the economic --

THE COURT: OK. How does that affect what you claim is the defendant's legal obligations to you?

MS. APPS: Yes. Let she explain that, your Honor. It's really important and you are asking exactly the right question. If those other holders go through and give their bonds up in the exchange and in the exchange the deal proposed is that they would then become pari-passu with us on the assets.

THE COURT: And your position is that can't happen. Your position is that you have a contract that says that that can't happen.

MS. APPS: No, no, no. Our position is we -- let's say a series of I am going to call it lower tear guarantors. We have a guarantee on, we ought to have a guarantee on those lower period guarantees to the tune of 1.5 billion.

THE COURT: Either do you or you don't regardless of how the deal goes forward.

MS. APPS: Right. But no, no, judge --

THE COURT: Your position is even if this deal goes forward you still, you claim that you have priority.

MS. APPS: Yes. No, no, no. That's not right.

THE COURT: OK. Well, explain to me how that -- I don't know what you're asking me to protect and why your plaintiffs need an injunction.

MS. APPS: Let me explain that, your Honor. It's just two steps of explanation. Other holders, billions of holders who are being duped into getting the new bonds, by getting the new bonds they became pari-passu with us. And so what happens is we have a guarantee then over --

THE COURT: You're not here to protect their interests. You're here to protect your interests. I am trying to figure out how your interests is being prejudiced.

MS. APPS: Here is how. Let me look. It's a two step process, Judge Daniels. May I just say, there's a couple steps to understand this. Other bonds holders, if they wouldn't go through the exchange if they knew the truth.

THE COURT: OK.

MS. APPS: If they do they become, they get access in the bankruptcy to the very assets over our one and a half billion dollars guarantee has.

THE COURT: But you say that they don't. You say that you would have rights that are superior to those --

MS. APPS: Before the exchange offer we have rights to

superior.

THE COURT: OK. But you are not saying the company doesn't have the right to do the exchange offer.

MS. APPS: No. That's correct. I am not saying the company can't do an exchange offer. They need to do an change offer on a correct offering memorandum. When they do that at most they can do is have new note holders come in and be pari-passu with us. So, they can come in and be the same level with us.

THE COURT: I don't understand why you can't get relief short of a preliminary injunction and temporary restraining order. You're a bond holder. They owe you money. They owe you cash. Is there some reason why they wouldn't owe you the same cash at the end of this deal if the deal was done properly or improperly?

MS. APPS: There is, your Honor, because --

THE COURT: OK. I don't understand. I don't understand the deal.

MS. APPS: Of course this is all about levels of seniority in bankruptcy.

THE COURT: Right now it's only about your level of seniority.

MS. APPS: Yes.

THE COURT: And whether or not you say you have seniority and you want to protect your seniority. That part I

understand, but I don't understand how injunctive relief is required to protect your seniority or to affect the obligation that they have, the monetary obligation that they have to you with regard to the bond.

MS. APPS: Because by what they're doing with their false offer is inducing other bond holders to tender, to bring up, to get the same level of guarantee that we have. And in so doing, diluting our, the value of our guarantee. So, today our guarantee of one and a half billion over "X" billion of assets is worth something. Tomorrow other bond holders falsely induce to submit to go through the exchange offer which the promise of which is, the promise of the exchange offer is to get the same level guarantee that we have. We then have instead of just having our own one and a half billion dollars guarantee, more bond holders are going to be on the same level with us with access to those same assets. We have to share our pie with more people than we would have otherwise --

THE COURT: But I understand you say that they have the right to do that. All I hear you saying right now is they don't have the right to do that based on false information. If they do that based on false information, how is it that you're irreparably injured if there is a preliminary injunction prior to a declaration that that deal was no good and you are still entitled to the $1.6 billion that you were entitled to before the deal was done.

MS. APPS: Right. Look. On irreparable harm -- by the way, we also had some of these unsecured notes and which we tendered. So, I'm also asking for withdrawal rights. But the irreparable harm points, your Honor, is all of these bond holders who are coming in under this new exchange in order to be brought up to our level are being deceived by the offering memorandum.

THE COURT: But that's not irreparable harm to you. You are not being deceived because you know the true fact. You can't say that the irreparable harm is that other people are going to suffer. I am trying to understand what the irreparable harm is to you.

MS. APPS: No, it's not their suffering which is that they are suddenly getting a new note under the exchange offer not worth what they were told it was worth. They're suffering is not what I am complaining about per se. What I am complaining about is through the exchange offer what the company has done is fraudulently induced them to come into my level, my pari-passu level. If they wouldn't have done so, they would not have done so -- I don't think -- if the truth had been known. Those other bond holders --

THE COURT: And if you prove that case, how is that you can't recover the same amount of money that you say you were entitled to prior to the fall?

MS. APPS: A number of points, your Honor. First of

all, it is an ongoing securities law obligation with a false offering memorandum. While that may not be per se irreparable harm --

THE COURT: Right. It's not irreparable harm to you. It's only irreparable harm if you tell me that you cannot be compensated if you prove that that's the case that you cannot be compensated. And you say that you're owed, you don't say you are owed anything else other than that? That's what I don't understand. You said your bond holders to the extent of 1.6 million dollar; is that correct?

MS. APPS: Yes. Let me address that, your Honor, on irreparable harm.

THE COURT: I want to make sure I understand the facts.

MS. APPS: I understand.

THE COURT: Your plaintiffs are bond holders and they're bond holders that are owed on outstanding obligation of approximately $1.6 million.

MS. APPS: "Billion".

THE COURT: I am sorry. "Billion dollars".

And you are afraid that you're not going to get paid?

MS. APPS: Right. No, it's two things. Yes, we're afraid we are not going to get paid and a money judgment won't be any good, yes.

THE COURT: That's what I'm trying to understand

because obviously you don't suffer irreparable injury if you can be compensated in money damages. And if you tell me that you are simply bond holders that are owed an amount certain, that amount certain is still going to be owed to you after this deal is done whether the deal is set aside or not set aside.

MS. APPS: Yes. OK. So, let me address that, your Honor. So, look. As a result of this action, first of all, the company is going to have to cure the defaults in the action. That's one and a half billion dollars. There is still an outstanding securities claim through our action, your Honor, through this action that we represent, these plaintiffs represent only $80 million of the outstanding one and a half billion. But the company will be on the hook for their claims and any other similarly situated plaintiffs because all these class note holders are the same class.

THE COURT: So, you are telling me that the plaintiffs who are not seeking a preliminary injunction are now owed $80 million?

MS. APPS: Correct.

THE COURT: So, why do they need a preliminary injunction in order to preserve their right to the $80 million.

MS. APPS: So, look. I'm just getting to the financial condition of the company point, your Honor, which will I believe satisfy your question on irreparable harm and why (inaudible). A damages claim for 80 million or whether

it's "X" billions with all other plaintiffs joining down the road won't be satisfied. Why? Because this company is in, we would say, sufficiently precarious financial condition for that to be a real issue. Let me explain what that means.

This company, Transocean, is I think in their letter they say one of the worlds or the world's leading offshore drilling on tractor. Many of the peer firms of this company in given the oil industry is in historic distress have already filed for bankruptcy.

THE COURT: OK. But you can't rely simply on the fact that they're in a distressed industry. That doesn't -- and I'm not sure that you are -- I am not sure that you say that you're entitled to being in any greater standing whether or not they're in bankruptcy and you have a priority or that they're not in bankruptcy and you have a priority. You're just talking about whether or not you get to preserve the priority obligation, financial obligation that they owe you under the appropriate circumstances if they do what they're supposed to do. I don't see how making a corrective disclosure is somehow putting you in a better position to prevent them from going into bankruptcy.

MS. APPS: Because, your Honor -- look, they may end up in bankruptcy down the road in any event. Our point is this, your Honor, if they have to do the guarantee of one and a half billion, it uses up their outstanding indebtedness, OK?

And they are basically running out of cash liquidity in about nine to 12 months so, in about nine to 12 months they would have to declare bankruptcy.

THE COURT: Are you telling me they are going to have to do that -- probably, they are not going to have to do that if they make a corrective disclosure because I am not sure I understand how you say that they are going to declare bankruptcy without a corrective disclosure in the next two days or they are not going to declare bankruptcy if there is a corrective disclosure in the next two days.

MS. APPS: My point is slightly different, which is without a corrective disclosure we are going to be harmed if they go into bankruptcy because other note holders are tendering and becoming, we'll have to sit at the table with our note holders who wouldn't --

THE COURT: The same priority you would otherwise have.

MS. APPS: I beg your pardon.

THE COURT: You are still going to have the same priority you would otherwise have when you are not saying that they don't have the right to declare bankruptcy.

MS. APPS: In bankruptcy, what will happen in bankruptcy is there will be more, the result of this exchange transaction, there will be more people at the table with us solely because of this exchange in the transaction which is

pursuant to a self offering memorandum.

THE COURT: But you say they have the right do this deal. You don't say that they can stop the deal. You are just saying that the deal that they're putting out false information. You don't have the right to stop this deal, do you?

MS. APPS: I am not asking to stop a deal.

THE COURT: OK. If you're not asking to the stop the deal, I don't understand how you claim that somehow the deal is going forward is going put them in bankruptcy or not put them in bankruptcy that affects your priority rights. That, I don't understand.

MS. APPS: My point is not that the deal is going to put them in bankruptcy per se, your Honor. My claim is if they do the right thing and give us our guaranty (inaudible) not short in cash and they declare bankruptcy in nine to 12 months, any money damages claim that we have won't be collectable at a hundred percent on the dollar.

THE COURT: Is it collectable now? It's not collectable now, is it? And it wouldn't be collectable if they made a corrective disclosure, right?

MS. APPS: No. It's not about whether -- I mean, look --

THE COURT: I am just trying to understand what it is you say they owe you and what it is you say that you cannot

recover in a judgment if you prove what you say you can prove and why it requires that this deal be ordered stopped in order to protect your right to the -- at this point you are saying the $80 million that the plaintiffs in this case would be entitled to.

MS. APPS: Right. The issue is what they're doing is improperly subordinating our position through this deal which cannot be unscrambled after the fact.

THE COURT: That's the part I don't understand. Tell me why it can't be unscrambled.

MS. APPS: So, what happens is what this deal says --

THE COURT: You're talking about a priority. If it's determined that they did a deal that affected your priority and that it was some sort of fraud involved or lack of disclosure on their part and you can prove that and set that aside, why are you not back right in the same situation that you would have been in had you not had a preliminary injunction? I'm not sure what the preliminary injunction accomplishes.

MS. APPS: It accomplishes if the preliminary injunction which is a pause on the exchange offer, a routine matter in these kinds of deals asks for corrective disclosure so that bond holders and anybody who's already tendered a withdrawal, so bond holders make the right economic choice. Currently, bond holders are saying give us the existing bonds you have, for example 50 cents on the dollar. Why would you

give up 50 cents on the dollar? Why? The company says because we're offering the enticement of being (inaudible) on assets pari-passu with my senior bond holders.

THE COURT: I know. But that doesn't benefit -- your argument may benefit those bond holders but that argument doesn't benefit your bond holders. That's an argument to be made by the other bond holders. They aren't here asking me to do this. You are here asking me to do this not to protect their rights but to protect your rights.

MS. APPS: Right. But let's say, your Honor, there's three billion in assets that I have one and half billion dollars guarantee over. As a result of those other bond holders being duped, fraudulently induced to surrender their bond holders there is an -- I'm going to make the numbers up as an example -- there is an additional one and a half billion dollars that has access to that three billion. Now, say in bankruptcy, right, that the assets are no longer worth three billion. They're only worth one billion. So, you only get -- at the beginning of that I have three billion dollars in claims on one billion, I get much less than if there's one and a half billion dollars claims on that one billion. So, the more people at the table the less, the smaller the size of my piece of the pie.

THE COURT: Well, but they're only at the table if you can prove that a deal was done that affected your rights that

should not have affected your rights. That hasn't happened. I mean, you can't keep merging what's in the best interests of others with what's in the best interests of your client. The only issue before me right now is other than considering it a public interest, the only interest that is before me right now in terms of irreparable injury that's required is what is the irreparable injury to you? And you say to me now that, you say that you're afraid that if you've determined that they still owe your client who are presently your client here, the plaintiffs, $80 million, that you're afraid that you won't get to obtain that $80 million, well, there's not a whole lot I can do about that. The bonds aren't due. You say yourself they could do this deal --

MS. APPS: No.

THE COURT: -- as long as they did a corrective kiss closure.

MS. APPS: Yes. That's the key, your Honor. That's the key. The point is, your Honor, the point is the corrective disclosure -- which by the way, can fix the problem right now so that may clients are not harmed is what's critical. I am not saying they can do the deal on the operating memorandum. They can't do the deal on a (inaudible). They can do a deal on a correct truthful memorandum so that all investors have the accurate information.

And here I need to explain why I'm harmed. I'm

harmed, your Honor, because the more people that come to the party and share with my assets, people who are now right today junior to me, people who wouldn't get an invitation to sit at the table because they wouldn't get access to that money, those people are being invited in under false presentences to share in the pie and I have to give out more of my pie to them in a bankruptcy. And that's harm to me by other bond holders tendering their notes.

THE COURT: Why would you have to give up more of the pie to them if you're able to prove that this offering was based on false numbers given to the potential bond holders?

(Inaudible due to background noise)

THE COURT: The other issue that I have questions about is you're asking for this two days before this deal was supposed to close. This deal was an outstanding tendering their shares for almost a month now. Why is this a timely application? Why is this application being made today, one day before it's to be closed as opposed to it being made 28 days ago?

MS. APPS: Well, because, your Honor, what caused the violation of the indentured is a transaction in respect to which there having an incredible opaque disclosure. It's a little complicated but bear with me for one second. What the company did behind closed doors without disclosing was in full measure, let me explain. They transferred assets from the

entity, the subsidiary over which my clients have a guarantee. They transferred them to a lower subsidiary. I am going to call it a lower guarantor. They transferred down without giving us the guarantee over the assets to follow the assets over the lower guarantor. They did that. There is no where disclosed explicitly that there's no guarantee given. You have to derive that fact from the language of the offering memorandum and in part because of the opaque nature and the complicated nature of these transactions which were not really fully opaque to us. It took us some time to identified what they had done which is in my judgment a clear violation of one of the provisions of the indentures.

THE COURT: When did that occur?

MS. APPS: Then on last Saturday we wrote to the defendants.

THE COURT: OK.

MS. APPS: And said to them, here is the problem, to give them an opportunity for a corrective disclosure. They wrote back to us Monday night. We filed this Wednesday morning.

THE COURT: So, when did you determine that they had put out false information and needed to make a corrective disclosure?

MS. APPS: We didn't actually work that out until I want to say it may have been time, maybe last week. But it

took us some time to figure it out, exactly the sequence of transactions and that it's a violation. But the company in our judgment must have known what it was doing.

What's interesting, your Honor, the provision at issue, Section 11.03, one of the aspects of the exchange offer was to seek consent from bond holders to remove restrictive covenants, remove restrictions on their ability to do the transaction. This was a section listed. They knew about the section. They knew that it was a violation. They wanted to ask bond holders to consent to waive that violation. They've since dropped that request they've amended their exchange offer partway through the exchange offer because I guess because they didn't get enough consent to do that. So, they knew about it. We were the ones who were trying to figure what they were doing and deciphering it.

Judge, I don't relish coming to the Court for emergency relief the Wednesday before a Labor Day weekend. But nor should the company have issued a fraudulent exchange offer set to expire at midnight on a Friday before a Labor Day weekend and then being opaque about the manner in which they've breached indentures.

THE COURT: You are saying it's opaque. I don't understand why it wasn't clear to you that the exchange offer, you've also tendered your share based on the same exchange offer you say. You knew what was being represented when you

tendered your shares. So, I don't understand when the lightbulb went off and you decided that you tendered your shares based on false information that you should have known it was false when you read it the first time and you should have read it before you tendered any of your shares.

Am I correct?

MS. APPS: Your Honor, the problem is that the memorandum pursuant to which the exchange offer, the whole point is that offering memorandum. A public document issued by the company and remember the issuer has the burden under U.S. securities laws to get it right. We don't operate under a buyer beware situation where you have to try to ferret out from an offering document whether a company has violated certain indentures or whether they're concealing that the nature of their transaction is false.

Here, your Honor, we -- you know the other problem is a pending exchange offer, even though we've tendered other junior shares, you know bond holders like us are faced with a Hobson's choice how to deal with it because if you don't, the way the exchange offer is structured, it's designed to be coercive. And if you don't tender your shares at a steep discount by the way, they are saying for you to tender at 30 or 40 cents on the dollar you could miss out all together as even being pari-passu.

THE COURT: But there is an alternative. You can

always tender your shares under protest and file suit at the same time. And I assume that that's what you decided to do. Why would you tender shares? You say that, you know, if you decide -- you didn't say I'm not going to tender my shares. You said, OK. Well, let's tender our shares and we think that this is a bad deal and we want a correct disclosure. I am not -- if there's a corrective disclosure, explain to me what is it -- we have -- I don't know and you may not know. I'll ask the other side, but I don't know how many people who've already tendered their shares. Even your clients have tendered shares up to this point, right?

MS. APPS: Can I clarify one thing? We are in three or four different sets of bonds. The three senior bonds, the three senior ones, we have not tendered those bonds.

THE COURT: OK.

MS. APPS: We've only tendered the junior ones, because the junior ones as I said, we were faced with a Hobson choice, what do you do with it? But we have not tendered the senior ones. We have a claim, even if you concluded we shouldn't have tendered or we should withdraw or something like that, we hadn't tendered the senior existing notes, your Honor. If we start with that, we are still left with this problem that if we don't tender the company is going to claim that we have been subordinated. So, we're left with this Hobson's choice of whether we tender under a false offering memorandum or don't

tender. I do want to emphasize, your Honor, the question, respectfully, that says that if we've tendered or we know about it, it puts the onus, the burden on us when the securities laws clearly put --

THE COURT: No. The only burden that's on you is to make a timely request for TRO or preliminary injunction. That's the only context that I've had --

MS. APPS: That's fair.

THE COURT: That's your version. I am trying to figure out why you say two days before this deal is supposed to close, this is the first time that you are in court asking me not to maintain the status quo but to change the status quo.

MS. APPS: Well, it's really only maintaining the status quo. And to be fair, your Honor --

THE COURT: How does that maintain the status quo? The status quo is that there's a bond offering and people have tendered their shares. It's supposed to close in two days. And the deal and whoever is going to tender their shares has either tendered them or they have two more days to do so. How is putting out a corrective disclosure, ordering them to put out collective disclosure with regard to information that I am not sure yet that they agree with. And I am go say that they don't agree that the corrective disclose that you want is an accurate statement and what they have out now is an inaccurate statement. But you want me to tell them that they have to one,

use corrective disclosure end keep the offer open for an additional period of time. That's not maintaining the status quo. That's an affirmative injunction that changes the status of what is otherwise the situation that you find yourself in two days before the bond offer is supposed to close.

MS. APPS: Let me address a couple of points, your Honor, if I may.

First of all, the first time we had learned they had not issued a guarantee to the lower tiered subsidiary that I talked about. Remember they put the asset transfer down. The problem is not doing the guarantee. The first day we learned that is what happened was the past Monday, August 31. So, we did the best we could in getting this to the Court as fast as we could. I respectfully submit, your Honor, that the fault does not lie just at our hands in bringing this but the fact that there are disclosures about the series transactions that led to the exchange offer were not fully disclosed and it was OK. The company, I would say, has deliberately done this in a way to not be transparent about the transactions which caused the breach of the indenture.

THE COURT: I take your word for that. But I'm not sure I understand if you are entitled to a guarantee, I am not sure why it would the not have been obvious to you when this deal was offered whether or not they were honoring that guarantee or changing that guarantee in the offer.

MS. APPS: Well, your Honor.

THE COURT: Is there something secret about that part of the offer and how did you come about to find that information later as opposed to early?

MS. APPS: Well, your Honor we wrote a letter on Saturday.

THE COURT: You're concerned -- you obviously knew before Saturday when you wrote the letter that this was in conflict with your guarantee.

MS. APPS: Yes, your Honor. But the standard for company disclosure is not for them to hide the ball and hope that clever enough bond holders don't figure out --

THE COURT: Well, I'm not sure what "hiding the ball" you are referring to. You haven't explained to me how this was secret information that is not available to you prior to Saturday.

MS. APPS: Because the exchange offer simply announces "Tender your bonds and if you do so, you will be senior to other bond holders."

THE COURT: Well, that's clearly in conflict with your bond holders, right?

MS. APPS: Right.

THE COURT: So, you knew right away you had a concern right away that that was in conflict with (inaudible). Even when you tendered whatever shares you tendered you had a

concern that that was in conflict with your bond holders, right?

MS. APPS: Well, your Honor, look. Look. Our view is -- well, the only thing I would say is the obligation always lies with the company to be clear about what it's doing. The fact that we have to, it took some time for bond holders to sort of derive through the opaque disclosures the nature of the underlying transaction, again, the underlying transaction is not directly part of the exchange offer. The underlying transaction that violates the indenture is not directly part of the exchange offer. You have to sort of infer it and derive that that's what they've done from the language of the offering memorandum.

THE COURT: I understand what you are saying but I don't get that from the facts that you are giving me because either there is a guarantee or there isn't a guarantee. Either this offering affects that guarantee or doesn't affect that guarantee. We keep referring to it as "opaque". I don't have any idea what you mean by that. I don't know what way this was opaque.

MS. APPS: No where does the offering memorandum explicitly say "leading up to this exchange offer we transferred the assets to a subsidiary and we did not, as required, give a guarantee to 1.5 billion of outstanding debt." It doesn't say that anywhere. That would have put headlights

and sunlight, as the securities laws require, on the illegal transaction that they've engaged in. They didn't say that. They simply said if the junior bonds tendered their bonds, they will have a guarantee over assets at the so-called lower tiered guarantors and bond holders who don't tender will have no access to that guarantee as the bond holder. It's extremely complicated and the offering memorandum was opaque. We wrote to the bond holders, to the company on Saturday as soon as we deciphered what it was that they were doing in the transactions leading up to the exchange offer.

And all we're asking for, your Honor, is if the penalty is going, the penalty shouldn't going go to the bond holders who failed in sufficient time to figure out the deception that's occurring when the remedy that we are seeking is simply to hold it over by a week or two so that the company can have time to make corrective disclosure and the bond holders who've already tendered can have the opportunity to decide whether to keep their bonds in there or withdraw them.

THE COURT: Why is it then insufficient, if this is resolved quickly why isn't it sufficient for them to simply reopen the bond offering. Those people who want to tender further can tender further and those people who want to withdraw their tender, can withdraw their tender.

MS. APPS: That's the relief we're asking you.

THE COURT: That's the relief your asking for upfront.

You can't get a preliminary injunction with regard to the ultimate relief before you've proven your case by simply saying, yeah, the preliminary injunctive relief is the relief that we are entitled to if we prove our case. You are entitled to maintain the status quo. You are not entitled to the relief now that without having proven anything (inaudible) sure that they dispute at least some of what you are arguing without moving anything that you are entitled to the ultimate relief that you say that you would get if you proved your case and don't really explain how it is that relief is inadequate --

MS. APPS: Let me just address the reopening point.

THE COURT: -- as opposed to before you get a chance to prove your case and they get a chance to defend.

MS. APPS: Let me address a few points. Once the deal closes, as I understand it, the old notes are rendered deficient or defunction. They go away. Then the new notes are issued. They're all held by BTC. You can't trace back the new note holders to the old note holders because you don't know who put in what tranche of bonds. Once that deal closes you can't unscramble the egg. All we're asking for is enough time to have our claim heard.

THE COURT: You keep saying "unscramble the egg", but what I understand you being entitled to is you are entitled to the value of bond as of today. Is that a fair way to put it?

MS. APPS: I would disagree with that a little bit.

THE COURT: You're not entitled to anything other than cash. By this agreement, what are you entitled to other than the cash that's represented by the bond?

MS. APPS: No. I get that, your Honor. You're entitled to cash. The problem is cash today versus what cash is worth tomorrow --

THE COURT: That's called "interest".

MS. APPS: No. If the company goes into the bankruptcy it may be cents on the dollar. It's about security and how much cash you have.

THE COURT: Quite frankly, the way you've describe it I can only (inaudible). You've given me no indication that they are on the verge of bankruptcy.

MS. APPS: Well, your Honor --

THE COURT: But I assume that your clients made a decision that this was a decent investment. So, they didn't invest in what they thought was a company that was on the verge of bankruptcy. And to say that oh, we're just afraid they might declare bankruptcy still doesn't tell me they don't have the right to declare bankruptcy.

MS. APPS: But the benefit of the bargain they got, the investment they got was for a certain amount of seniority and security. They got a guarantee. They paid the (inaudible. One of the tranches was in January 2020. They paid money for a guarantee to keep them at a certain level.

THE COURT: Right. And if you can prove that, they're still entitled to that, right? They're entitled to their money and they're even entitled to a priority in terms of who gets paid first, right?

MS. APPS: They're entitled to the priority. The problem with the exchange offer, your Honor, is that what happens to their priority is it gets diluted because other holders are duped into putting forward their bonds when they otherwise wouldn't have if they had known the truth about the economic reality of the company and --

THE COURT: But that's dependent on your speculation that there's going to be a --

MS. APPS: That's actually not, I wouldn't say that, your Honor, at all because --

THE COURT: How is that going to happen? If there's no bankruptcy, how are the (inaudible) they were entitled to as bond holders if there is no bankruptcy?

MS. APPS: I hear you.

THE COURT: Is that correct?

MS. APPS: That's right. But let me just say -- and we've submitted by the way an expert declaration about this issue, your Honor. The company is one of the biggest -- it's a behemoth. It's like the Titanic. When you are sailing the Titanic you don't say move left or starboard or whatever when the Titanic is right next to you because it's too late. You

look at the iceberg a mile away and you steer it --

THE COURT: But you don't buy a ticket on the Titanic if you think it's going to hit an iceberg.

MS. APPS: Well, when these people were buying tickets, they were buying tickets for something they didn't necessarily think was going to hit an iceberg. If they thought there was an iceberg then they bought tickets with a guarantee to the life rafts. Again, we're taking this --

THE COURT: It wasn't my analogy.

MS. APPS: It's my fault. I apologize, judge.

THE COURT: So, I am just try trying to understand the analogy here. I can only take that so far.

MS. APPS: You can. You've totally showed that one can only take that so far.

The other thing that's really important, if you ask just as another evidence of harm, the market of the price of the bonds have materially declined because of this deal. This is what it shows you.

THE COURT: How is that going to change if there's a corrective disclosure, the offer is held open for another ten days and then it happens any way? How is it --

MS. APPS: I am not saying bankruptcy is going to -- well, what happens anyway, because our belief is if you hold the offer open ten days, you give corrective disclosure, our belief is those other holders won't submit. If we're wrong and

the other bond holders do submit regardless, there's nothing we can do about that. But the point is that we don't think we're wrong. We think other bond holders economically will look at this deal. When they know the truth they went be submitting and that affects our rights and our position.

(Speaking at the same time)

MS. APPS: If that's true, if they really, if the defendants were really to believe that the bond holders would submit regardless, then they really should just leave the offer open for two weeks. What's the harm? They've already changed one deadline internally throughout the offer. If they're saying there's no imminent bankruptcy, there's absolutely zero harm to them to extending this by another two weeks. And that begs the question, we won't they do that? Give the Court time to analyze the contractual remedy here, I mean the provisions that we claim is breached and so that the Court can weigh in on whether or not the offering memorandum is true or false, why wouldn't the company give the Court enough time to do that and correct the false disclosure when there's absolutely no harm to opening that exchange offer for two weeks?

THE COURT: All right. Well, let me pose that question to, let me hear from the other side.

MS. APPS: Thank you, your Honor, for bearing with me on this.

THE COURT: Sure.

MR. KURTZ: Good afternoon, your Honor.

Can you hear me?

THE COURT: Yes, sir.

MR. KURTZ: So, your Honor, plaintiffs characterize the application as routine. There's absolutely nothing routine about any TRO. There is especially nothing routine about a TRO where a tiny minority note holder seeks to prevent a series of exchange offers for the benefit of both the stakeholders and the company.

Your Honor started with irreparable harm. This is all money. That's all it's about. Plaintiff says 80 million. I think it's actually 70 million. I think that's a wounding error in the context of this case. And that's strictly monetary and therefore, by definition neither reparable. Plaintiffs are trying to turn it into irreparable harm by claiming that they won't be able to get paid because there'll be a bankruptcy. There is no proof of that, whatsoever. It's totally unfounded. There were statements made without any evidentiary basis that the company is no where close to that. The company has $2.8 billion of total liquidity, $1.5 billion in cash, $1.3 billion in a revolver, none of which has been drawn down and a backlog of contract revenues of approximately $8.9 billion. The company's total assets are 23 billion compared to short term and long term liabilities of less than $12 billion.

It is unfounded to suggest a company is teetering on bankruptcy and it is also a little ironic because the backdrop for this is that the company is very responsibly going through an exercise to ensure that it is able to best withstand the world industry and country conditions now with the global pandemic by reducing the face amount of their debt and extending their maturity and to work with the Titanic. Hypothetical there.

This is a company that is two miles from an iceberg an it says turn port. And have you a plaintiff here saying, Don't let him do it. Grab the wheel. Don't let my him to it. Because they want a bankruptcy. They're distressed investors. They think they'll do better. That's what they've been pushing us for. So, the issue with it though is the company had responsibilities, all stakeholders to itself, a bankruptcy not the way to go right now. It's totally unnecessary. It's potentially very disruptive and the plaintiff belonged between 1.7 percent and 5.7 percent of the bonds at issue. So, it's 70 million at its face, 3.25 billion and hijack the process. And they can't drag along what is now $1.1 billion of sophisticated investors that have already tendered. They're all used but they are not entitled to dictate the actions of the company or the other sophisticated bidders of upset, the holders of up to 98.3 percent of the bonds here at issue.

THE COURT: Does this deal and the information

provided about this deal infringe upon their contractually paying guarantee?

MR. KURTZ: It absolutely does not, your Honor. Let me address that three ways. One, in terms of timing of the claim. Two, in terms of what the disclosure claim is. Three, in terms of the contract positions that they're taking as being the subject of the disclosure claims.

In terms of the delay, as your Honor knows, you can't create your own contingencies to support emergency relief -- and I think the record got a little muddy there. The structure here at issue was an outside audit done nearly a month ago. The exchange offer itself was announced August 10, more than three weeks ago, and that exchange offer unambiguously discloses that these notes are going to be senior and they are going to be new subsidiaries that will support them. There was an orb chart attached. Every piece of information that is relied on in this complaint was release on August 10.

The plaintiffs also wrote to the company on August 10 to raise issues. The response came on the 11th and with full knowledge of the structure and with issue joined the plaintiffs then waited until September, signed and enjoined the exchange offer.

Your Honor sort of a number of times said I don't really understand the relationship between the relief sought because ultimately, all you are getting is the delay and a

quote, disclosure and an opportunity to change your (inaudible). That's because this is all part of a design to prevent the exchange from occurring, not because of anything related to the underlying claims which are being served by the remedies.

The disclosure is actually nothing close to being corrective. It's exactly the opposite. The disclosure here at issue is that these notes have been set. They have been senior. And they are senior. That was exactly how they have been described. That is how they have been structured by leading investment banks and by law firms and by executives. It is no dispute that the disclosure about the structure is completely accurate.

What the plaintiffs want to say is they are not senior as structure. They are not senior as described. And their basis for saying that is that if somebody brings a lawsuit -- and they can't bring a lawsuit and I'll come back to that and they haven't bought a lawsuit on the construct. (inaudible) the plaintiffs that there could be a lawsuit, that the lawsuit could be successful that if there is a lawsuit that is successful years down the line and that remedy might change seniority of debt. But that's not what the debt is today. The debt is senior unless and until somebody successfully sues and makes it not receive senior. And so the disclosure that the plaintiffs seeks and that they're characterizing as corrective

would be to say they are notwithstanding exactly how these were structured that they are not senior, which would be a completely false and misleading disclosure prohibited by the Securities Law.

THE COURT: You don't think that the seniority of this debt is in conflict with their guarantee of priority?

MR. KURTZ: It absolutely is not and I'll move to that in just a moment, your Honor.

At the moment what they're asking for is for the company to adopt their position which is incorrect irrespective of whether it was (inaudible) and described the notes in a way that is indisputably inconsistent with the way they have been documented and the rights that have been created absent a lawsuit down the line being successful and eliminating structure that's been put in place. That would violate the Securities Laws.

Disclosure cases under the Securities Laws traditionally involve an agreed upon fact and then an argument about whether they're material. They don't involve arguments. You don't make disclosures. You're not required under the Securities Laws to recuse yourself of breaching a contract.

Moreover, your Honor asked counsel a number of times, how are you duped in any way or misled in any way? You have all the facts. You're arguing the facts. And counsel kept saying, well, other people are duped. Other people are duped.

This is not a class action. And she is not here able to represent the interests of us. The securities violation requires two other factors. One is scienter and there is actually no particularized allegations as required of fact that would support any finding of scienter.

It also requires reliance. There is no reliance on any false misrepresentation. Not only because there's no false misrepresentation but also because these plaintiffs say they know exactly what the facts are. They are not being misled in any way, shape or form. So, they have no disclosure claim. So, they can't show a likelihood of success on the merits. As to the contract premise because their disclosure claim is that the company is supposed to say that what the company is doing a barred by contract is also completely defective. One, as I mentioned, they can't establish a likelihood of success on the merits with respect to a breach of contract claim because they haven't even pled the claim in their complaint. Two, they can't sue for breach of contract because there's a number on condition precedent on the indentures under which they hold their notes. The indentures required the participation of at least 25 percent of the note holders that first issue a notice of an event of default. And there's a 90-day period to cure before the allegations could ripen into a potential breach. Then a trustee has 60 days to consider whether to sue. And then if the trustee doesn't sue in that 60 days then

(inaudible) has 25 percent of the outstanding issuance that wants to sue, they'll first be able to do that. So, there is no claim here and no standing.

Now, as to the merits of the claim, they suggest the liability of the provision has nothing to with what's going on here and what plaintiffs utterly ignore is that the indenture explicitly provides that the company has allowed this issue up to $2.4 billion of debt senior through the notes at issue. That is the deal.

Counsel mentioned how bonds are priced. They're priced to include where they go in the seniority. And here they're an allowed basket of $2.4 billion that is senior to that. The revolver uses although it actually hasn't been involved, but the revolver is in the one/two billion dollar range, maybe a little more, that's being totally preserved even though it hasn't been drawn on and that leaves about 1.1 billion or so left in the basket that the company is permitted to use to raise senior debt. And that is where and how this issuance is capped.

So, it works exactly within the explicit allowance provisions in pricing of existing indentures. And the way that the company is doing this, the way the company creates the structurally seniority which is provided for in the contract is through some midlevel subsidiaries. That mechanism is exactly how you effectuate the right to put in place structurally

senior debt within a basket of $2.4 billion. And this exactly the structure that was put in place and understood by the parties because the plaintiffs have some structural seniority over other debt holders and it was done in exactly the same way.

So, there's no potential claim here. They tried to evade without ever discussing the fact that they're allowed to fine them up to $2.4 billion which is all that has happened by claiming that somehow this is a sale of all or substantially all the assets of company. It's not. It's nothing but an internal reorganization with no impact, whatsoever, on the plaintiffs.

The way this works now is that today the value of the enterprise resides in the income generating operating assets. The defendants are mere a holding company. All the value of the defendant holding company is indirect ownership of those operating companies. Prior to the new structure, the defendant's value was in indirect ownership of those operating assets and after the new structure, the defendant's value and indirect interest in the identical operating assets. Defendants haven't sold or otherwise lost any of those assets which are the operating company. There's nothing but a paper difference. It is no change in position. There is no change in economics or the introduction of another intermediate level holding subsidiary other and based on the implementation of the

agreement that allows the senior debt. In short the stock of a company that holds the stock of a company that holds the stock of a company that operates, is the same thing as owning the stock of a company has the same identical structural description (inaudible). Knowing your of that in this entire deal economically and you've heard only complaints about this is that there will be claims senior to the existing notes up to about a billion dollars which is exactly what is permitted and provided for under the contract.

And there is a case, but pretty much on point is the Dinagee case (inaudible) the plaintiffs spent a lot of time focusing on a variety of things that happened in that decision in an effort to distinguished it. What did he do is to cite to the part of the decision that actually governs here. It's on pages 53 to 56. They're actually quite short because it's a Westlaw cite. But it says, quote, at the present time DHI is a holding company that generally holds indirect interests in companies that own (inaudible). After the transaction is consummated DHI will be a holding company that owns interest in different companies under the same corporate umbrella that owns the same power plants.

From a qualitative standpoint plaintiffs have not shown they are likely to succeed and proving that DHI transferred its assets substantially as an entirety un the section of the contract they are at issue. Then moved on to

the quantitative analysis that also gets looked at in the successor liability, substantially all cases, and said that because they will continue, because the operating assets will continue to be subsidiaries of DHI, any assets transferred to them are not being transferred away from the issuer's ownership which is exactly what's going on here.

And if you are really wanted to consider that the allowance of senior claims precisely as provided for under the governing indenture would somehow transfer the assets because is permitted it would be a transfer of assets of $1 million as against assets of $22 million and therefore, would only complies of less than five percent of the total value which is no where near all or substantially all of the assets. In fact it's quite nominal in contrast.

Following up on some of the things that your Honor was talking about, the relief sought has nothing to do with the claim that they're trying to make even though it's not a part of their complaint because the intermediate subsidiaries have already been created. So, if there was some sort of transfer of assets by adopting the very stricture that is contemplated by the contract to allow structurally senior debt, then it's already happened and nothing about the relief here is actually directed to remedy anything that's supposed to be wrong. So, what you really under end up having here is, I think what really were deals, what the plaintiffs are really right to do

here is we know they're complaining about the structure of the guarantors but they don't seek any relief relating to that. The relief they seek is, one, to make a disclosure that the company is breaching the contract. That would be false misleading and impermissible. But that would allow them to chill the exchange by saying that this is a breach. They want two weeks. Just to give them an opportunity to run out and try to generate some interests against the exchange and they want this ripe for people that they don't represent, nonparties here who have made elections to be able to withdraw their own (inaudible) even though they don't represent their interests and have no (inaudible). They want that so if they're successful in convincing people not to participate in the restructuring that there is a mechanism, an unprecedented one as far as. I know of no cases cited for this that would allow them to interfere with the exchange.

So, the reason is there's really no relationship between the claims they're making and the relief they're seeking is because this is out of the play book of people that are trying to stop (inaudible). Decisively in favor of the company, the plaintiffs aren't damaged at all for $70 million dollar. And they maintain that they will be fully reimbursed or be entitled to be reimbursed any where outside of bankruptcy which is a completely unfounded argument that they're making.

What they have today (inaudible) to stay exactly where

they are. This isn't one of those coercive tender offers where people get dragged or they can go into the new paper as they've chosen to do. They have a floor. So, they can stay on their floor or they can buy new shares but either way, they are not harmed. The company on the other hand loses the opportunity to increase its outstanding debt by over a million dollars. To start making some of those directional changes before the iceberg shows up it extends its maturities to 2027 giving them more runway to deal with what's going on in our time based on COVID and related issues. And it also harms the investors that want to participate in this exchange, the large number of investors and I don't have the number handy but I think it's closing the three figures that it exchanged the base amount of $1.1 billion into this exchange because that's what they want to do and they don't want to be dragged around the holder of 1.1 (inaudible) where sophisticated investors can make their own decision on whether to maintain notes or to exchange their investments into other notes. And it is not served by having very small stressed investors make decisions for them.

THE COURT: What would you say, what's going to be the status of this deal as of Monday or Tuesday?

MS. APPS: Well, the way it's set up today the exchange offer closes on Friday. One of the problems, one of the reasons that this show up two days before it ends play back book exists is because they tend to get a lot of the exercises,

the exchanges in the last day or two but really primarily on the last day as people are finding out. And having the litigation filed that makes pretty inflammatory allegations, allegations of fraud and the like that are completely unfounded tend to have a chilling effect. So, I guess the bankers and the company will get together and figure out whether they still want to close on Friday or whether they want to leave it open for a couple days pending the resolution that happens here today, assuming the resolution does happen here today to clear up the overhang that is produced by bringing this litigation.

THE COURT: What are you saying would possibly happen in that timeframe?

MR. KURTZ: No, I'm not saying anything happens other than the market is spooked by any suggestion that there's a likelihood of success on the merits that there's a fraudulent transaction that breaches contracts when it's not a proposal of transaction there a breach of no contract. Where the plaintiffs have a burden and they haven't discharged that burden on demonstrating any of the elements for injunctive relief either a likelihood of success on the merits and either irreparable harm, not a balance in the equities in their favor and not a public interest.

THE COURT: But you're not suggesting that the defendants are either contemplating or pending this offer or taking some other action at this point with regard to in

response to this claim?

MR. KURTZ: Right. They're certainly not pulling the offer, changing the terms. It is conceivable that it will be extended for another day or two or more, whatever our banker thinks is appropriate to make sure that (inaudible) has been generated by having a litigation filed is clear in time for investors to make an informed decision to exchange or not before it closes. Maybe that is not a concern. Maybe I'll get enough exchanges because their capped on this. As I mentioned, basket is 2.4. The company is leaving open the full revolver. So, they can only allow about 1.1 billion or so of new notes. And so, I guess if they get the full amount then, it'll close and then a few days later it'll close officially but the exchange period will close and if the full basket isn't filled up then maybe it'll be extended for a day or two. That's very commonplace.

THE COURT: What is the status that you can say --

MR. KURTZ: So, as of I think earlier in the week -- I might have the date wrong. It was either last week or early this week it was publicly disclosed that investors had exchanged up to a face amount in excess of $1.1 billion. It is not public since that time and how many exchanges there have been. So, I don't think I in this venue could speak to that. But it's recent -- of 1.1 billion.

THE COURT: Of what total amount?

MR. KURTZ: Of the 3.25 billion.

THE COURT: OK. And if the plaintiffs are right, in what way can they get adequate relief if there's no injunction?

MR. KURTZ: I'm having a difficult time connecting their injunction to their relief. If they're right, they have a 70 million dollar claim. I think it's 70 that they'll pursue. And just like every other litigator in the world, if they can win and we don't think they can, they'll chase a judgment. The only way they've tried to characterize this is something different than a normal claim for damages is by speculating. It would no basis, whatsoever. Probably every company that has anything to do with the economy is going to be bankrupt at some point. I've already gone through the billions of dollars of liquidity here. There is no pending bankruptcy. The company has substantial equity value. Any company, you can make any damage claim in the world against anybody and you can't transform that into a claim for injunctive relief by claiming you won't collect. But they'll have whatever remedies they are entitled to including for a guarantee, I suppose in any ways case that they can bring and they so far have no standing to bring a case so far. They have don't have merely enough holdings and no grounds to prove their claim.

THE COURT: But what do you think is the claim that they're attempting to bring?

MR. KURTZ: Well, they've brought, here is what

they've brought. Disclosure claims that are absolutely frivolous and I don't say that lightly. There's no such thing -- and the cases recognize it -- disclosure requirement to say you are breaching a contract. There is no disputing we take the transactional documents today and those governing it, they provide structure seniority to the new notes. The plaintiffs are saying, no, they don't because you are not allowed to do it. That's untrue. If somebody files a lawsuit and proves that, then they'll have whatever remedy they have. But you can't describe, it would be fraudulent to describe these notes in anything but senior structurally because that's exactly how they have been structured, created and documented. But you can't have that.

In addition, the only way you have a Securities Law violation is if you are alive. This is for people who rely on false statements. These plaintiffs are relying on any statements. They are taking truthful statements, characterizing them as false and demonstrating they are not relaying on them because they say they know what can happen and what can't happen. And the only underlying claims for this is that somehow you are not allowed to raise senior debt to them when there's literally no way in the world one can dispute there's express contract rights to raise up at $2.4 billion debt senior them in a basket which is all that is happening. So, then they're trying to find a way you can do that. But the

way you are doing it violates the ownership substantial (inaudible) it does not. It's exactly the way you effectuate this type of structural seniority. The reason it's structurally senior is because it's parked in a different subsidiary. That is exactly how the plaintiffs' structural seniority was created. So, it was exactly contemplated and it's exactly how it goes forward today.

And as I mentioned, as Dinagee found on all fours, there's nothing leaving. It's like you have an asset and you have it in your living room, your Honor, and then you decide, I am going to put it in my dining room. It's your asset. Nothing has left the system. The company's started with an indirect interest in operating assets through directly holdings in a variety, a whole series of holding companies. And that's exactly what they have today without any leakage, whatsoever, as to any of the assets dealt.

So, economically, it's not right. Legally, it's not right. As a matter of Securities Law it's not right. It's nothing but a distressed investor that's trying to muck up an exchange offer so that they can leverage the company into something they want to do more comprehensively. They said they want a comprehensive restructuring. And lots of people believe that that's code for equalizing debt so that you end up with ownership interest. And then as people climb out of these market conditions or precipitated by a global pandemic, you

capture a lot of extra value.

And I'll note that the team here, not Ms. Apps as far as I know but lots of other names are bankruptcy. This is a play book play to muck up an exchange offer. They're fully protected but there's no claim. They have a pretty high burden to get provisional emergency relief. They've delayed to long. They can't, they have to show irreparable harm. It's all muddy. There's no bouncing of equity helps them. To the contrary. It is the company that is protecting all the stakeholders by steering the ship miles in advance of an iceberg for as much runway as balance to strengthen its balance sheet because these projects, this is the leading offshore drilling company, these projects are capital intensive and they're long term and those were the strong balance sheets, get the business.

And the public's interest is clearly not a having a small distracting investor (inaudible) of outstanding debt so they can force people to make the decisions that they want to make. They get to stay in the debt. They get to convert and exchange into something that's different that's structurally senior but at lower face amount and do that as well. What they can't do is make decisions for everyone else. And I heard probably dozens of times but other investors are being duped but other investors might make decisions. Those other security team investors now know exactly what they are doing. They

speak to the company. They know how to make investments and they should not be, they're decision shouldn't be impacted about having an injunction that there's absolutely no basis for.

THE COURT: All right.

MS. APPS: Your Honor, may I address a few of those points if my colleague for the defense has concluded his remarks.

THE COURT: Yes.

MR. KURTZ: I have.

MS. APPS: Thank you. Sorry. It's hard to see on the virtual. Thank you.

Your honor, if I may appreciate addressing a few points.

First, your Honor asked me what harm to the company by keeping the offer opening. And you said it's a question for the company. What defense counsel just ask did was identify absolutely no harm to the company in keeping the offer open by two weeks. On the contrary, he said they were considering extending the offer in any event. So, there's no harm on the side of granting the relief to keep the offer open for two weeks.

On the issue of a corrective disclosure out of initial matter, they've received a notice of default. I think it was today or yesterday from more than 25 percent of the holders of

bonds that we're complaining about, not just the 80 million but 25 percent of holders of the bonds we're complaining about have received a notice of default.

The corrective disclosure we're asking from them is not, would have to include I should say at this point at least a notice of default, but they don't have to recuse themselves as counsel suggested of wrongdoing. They just need to disclose the fact that this particular provision that we've identified, Section 11 requires them to give a guarantee or some disclosure about. The relief we're seeking is relatively modest in comparison to the harm here to the bond holders.

And I want to identify the harm. We've talked a little bit about it. When the exchange offer was announced, the equity of the company drops 50 percent. All of the trading prices of the bonds significantly fell. One of the deals that preceded the exchange offer with the transaction that benefited the company insider, I mentioned that a board director who was a significant stake holder who benefits ultimately because what the company is doing by this exchange is subordinating more senior debt which helps the equity holder.

And I mention that in particular, counsel mentioned that there's no allegations with respect to the seniority but we did include that allegation with respect to scienter.

THE COURT: I am not clear. What is the claim or claims, legal claim or claims that you intend to pursue?

MS. APPS: This action, your Honor, is about a false offering memorandum.

THE COURT: So, what's the legal claim that you intend to pursue?

MS. APPS: It's a securities claim, a violation of Section 14-8 which my clients are entitled to damages.

THE COURT: A securities fraud claim?

MS. APPS: Yes.

THE COURT: As opposed to breach of contract claim?

MS. APPS: Yes, that's right. The breach of contract claim is a separate claim. To be clear, your Honor --

THE COURT: I am trying to understand what claim or claims you say that the injunctive relief is in support of, in support of a contract claim, in support of a securities fraud claim, in support of both, in support of additional claims? What is the nature of the claims that you are pursuing?

MS. APPS: Securities fraud claim, your Honor, Sections 14-E of the Exchange Act and 20-A of the Exchange Act. They have false statements because three have lied about the fact that they have subordinated our debt improperly. They've lied about the fact that actions they took prior to the exchange offer view violated indentures. And if they complied with their indentures, there would be an additional 1.5 billion guarantee over assets that the new shares are going to get access to.

THE COURT: Well, I just don't understand how your plaintiffs are the victims of the securities fraud claim.

MS. APPS: Because --

THE COURT: They have not been defrauded.

MS. APPS: Well, that's not true.

THE COURT: OK. Considering the elements of securities fraud, in what way do they constitute the victim of securities fraud?

MS. APPS: Your Honor, they're harmed because -- first of all -- and I've said this -- first of all, there's a false offering memorandum out there, right? And even if you, the arguments --

THE COURT: But that wouldn't make them the victim of securities fraud claim.

MS. APPS: Well --

THE COURT: They have to -- anybody who thinks that there's securities fraud being perpetrated against some innocent unknown victims can't file a lawsuit. So, I am trying to figure out what's their spanning with regard to the securities fraud claim.

MS. APPS: They own securities and the value of which has dropped precipitously as a result of that fraudulent exchange offer. The value of the securities senior bonds were 49 cents on the dollar when this exchange offer was announced and it dropped to 40 cents. So, the exchange offer itself has

directly cause them harm through the drop in the trading price.

But moreover, the more important thing is, your Honor, the fraudulent exchange offer is going to harm them because, you know, defense counsel incorrectly say we're complaining about other people being duped. No. That's not the point. When other bond holders are duped it dilutes the value of our guarantee. We --

THE COURT: Your claim is not that your clients had been duped.

MS. APPS: No, no. I actually, the point is, your Honor, that the company's lie in the offering memorandum is impacting us. It's caused other bond holders to exchange which hurts the value of our assets of things that we own.

The other thing is too I want to say, your Honor, we've also tendered -- don't forget we've relied on, we've tendered the lower tiered bond. So, if this company issues a false disclosure we want the opportunity -- excuse me. If the company issues a corrective disclosure we would also request the opportunity for all bond holders including ourselves to withdraw the tenders that we've previously made.

You know, your Honor, one of the things that the defense counsel keeps coming back to is that we should somehow work out that there's deceptive offering memorandum which it was false and defective. But again, that flips the burden on issuers to publicly disclose truthful and accurate offering

memorandums and securities document. All we're asking, again, the minimum relief we're asking for is that they fix the problem. Even if they are not willing to agree that we're right and we absolutely are. I thoroughly disagree with the arguments made by counsel with respect to the underlying issue here. There's no harm that, they have identified no harm by just issuing a very limited corrective disclosure to say that the notion they could view this series of transactions without violating their existing indentures has been challenged and the company faces at least the risk of having to increase the debt or the guarantee of one and a half billion dollars and hold the offer open for two weeks.

They're considering holding the offer open in any event. So, what harm is there in doing that taking that very limited step to protect all the investors and allow them all to make (inaudible).

And there's two points I really want to make if I may, your Honor. The plain language of the indenture that we say has been breached, could not be clearer. It is unambiguous on its terms. We've cited plenty of authority in support of our position. But I bring the Court back to the plain language of that indenture. It prohibits a transfer of the assets to a lower tiered entity without that entity also assuming the guarantee. They did precisely that. They absolutely did it. This is plain on its face. They had to know it. The case they

cite is completely different. In that case there was an entity, a parent level. It had in that case the, what happened was it was the loan apparent level. There was no transfer of assets from the parent level to the lower organization.

And in the indenture at issue they had this relevant provision at the parent level but they didn't also have the relevant provision at the subsidiary level. Our indenture is fundamentally different. We have both provisions. We have the provisions preventing this kind of action taking place at the parent level and we have a provision which expressly prohibits this action taking place at the subsidiary level. It is the violation of the subsidiary provision that we are relying on and it says nothing relevant about that given that difference in our indenture.

It was a bargain for right as part of our indenture. What you are buying when they buy these bonds is a priority in bankruptcy, a guarantee that makes you senior to other holders. And they are diluting that guarantee, diluting that value by engaging in the series of transactions including the exchange offer. And they could fix it. They could fix the problem with very limited relief, which is to hold the offer open and give it corrective disclosure in the very limited form in which we've requested it.

If I could just have one moment?

The other point I want to mention is counsel keeps

referencing 2.4 million in indebtedness. That's a complete red herring. We don't dispute that they can take on additional senior debt. The real issue is they can't do this transaction which basically strips the value of our guarantee.

We are not saying they are going to go bankrupt tomorrow. But what you heard counsel say in his argument was if a lawsuit is successful it will be years down the road. I think I wrote that down correctly. He said it would be years down the road before we recover. Our point is a money damages award years down the road is useless to us if this company goes into bankruptcy. We have submitted (inaudible) from an expert that said that by June 2 of year this company is going to have a liquidity problem that a may force it into bankruptcy. In contrast to our irreparable harm, our inability to recover on damages, we are asking for somewhat most limited relief which the company hasn't said will harm it at all.

MR. KURTZ: Your Honor, could I just have two minutes maybe?

THE COURT: All right. Go ahead.

MR. KURTZ: Counsel keeps saying that the companies haven't identified harm. In the first instance there's no burden to identify harm. It's the plaintiffs that have the burden to proving the right to extraordinary relief. I have identified the harm. Having the Court impact exchange offers which would require a finding of likelihood of success on the

merits with respect to fraud is harmful. The company is being told publically that there are subject orders is based on fraud is plainly harmful.

These aren't corrective disclosures. These are incorrect. The company can't say it. The company would be violating the courts (inaudible) with the change. Now with the 11th hour again. Just say there's a claim that people believe that you cannot do it. That's already public. The plaintiffs wrote letters and they've made those letters public. This proceeding is public. The offering memorandum doesn't need to include their allegations and litigation in a public forum.

Your Honor, the securities fraud, they are not (inaudible). No matter what's going on here, they're fully aware of what they're doing. There's no allegation about a lawsuit in the value of their security. That's a brand new claim. That's not in the complain. What they're claiming is strictly that the description of the structure as new notes being senior is false and misleading when it's not.

And counsel said we'll try and flip the burden on the offering memo. We have no burden. The offering memo accurately describes the structure here, exactly the new subsidiary and exactly the seniority. So, they've had that since August 5 or August 10 and it has nothing to do with what they can ferret it out. All an insurer can do is describe the transaction and then it's up to others to read it and raise

objections if they want to.

And then lastly, they've finally responded to the first time the fact that there's a $2.4 billion basket reserved for senior debt. That's exactly what's going on here and they can't dispute that. They don't dispute that. They just claim the structure somehow isn't right. To the contrary, this is exactly the structure one uses to take advantage of the structure senior debt basket and it is exactly the structure that was used to create the structure of seniority that the plaintiffs enjoy in their note issuance.

So, I appreciate your Honor taking so much time. Unless you have any questions, my (inaudible).

THE COURT: All right. I am going to deny the motion for preliminary injunction and temporary restraining order. I don't think the plaintiffs' submissions in this record were able to demonstrate here a likelihood of success on the merits or irreparable injury and I don't think that the balance of equities, particularly, given at this time this late application are in favor of the plaintiff in terms of changing the status quo and an affirmative injunction with regard to this deal.

There's a dispute. It may be a contract dispute. It maybe securities fraud allegations but there's no reason why plaintiff, any rights that the plaintiff has can't be compensated in dollars. It's not an argument that while later

on they might have the dollars to pay us, that's not a compelling argument to issue injunctive relief.

Also, related to securities fraud, in any claims securities fraud is not the appropriate relief in the span of securities fraud case preliminarily. And preliminary relief is rarely, if ever, that, judge, they should have to say at this stage of the litigation that they made false statements to the public and they should have to correct these false statements and make different statements at the beginning of this litigation. There is no support for that and that kind of relief. If there is such a case to be brought by these plaintiffs then that can be articulated and if some corrected statements need to be made and/or some other injunctive relief, primary he injunctive relief is appropriate, then that can be considered at that time. It is not a strong argument to say if we don't get it today it might not be available to us tomorrow.

The balance of equities, people who tendered toward this deal, this deal is closed in two days. They've shifted the deal by court intervention at this point. It seems to me that the nature of the dispute between the parties is fairly public and well-known and can be communicated by the parties. I don't think it's appropriate to tell those who've already tendered their shares that it's necessarily going to be different offer later on or different disclosures later on or different obligations later on.

With regard to the contractual dispute here, the plaintiff is entitled to what the contract provides for and the plaintiff is entitled to that and it's entitled monetarily to judgments in those amounts if plaintiff can prove the case. But two days before this offer is scheduled to close whether or not it in fact closes in two days and specifically request that the defendant be obligated to make corrective disclosures with regard to issues that they maintain at this stage of the proceeding warrant no corrective disclosures. It is not appropriate based on this record. And it appears to me that the plaintiffs if they have a claim in contract or securities fraud against the defendant, given the nature of their relationship, the contractual relationship and otherwise debt holding relationship to the defendant that they are fully entitled to be compensated in the dollar amounts in which they say would have been the reasonable value of the bonds at appropriate stage of this relationship. And defendant if the case is proven against the defendant, the obligation to honor such a judgment to the extent they're financially able to honor that judgment, this Court, clearly, there's no argument that's been made to this Court is appropriate for this Court to do anything that makes it more likely or less likely that the defendants (inaudible) transactions or even declare bankruptcy given what the current or future state of the company is. Obviously, those individuals who have invested in this company

to the extent that they've taken a risk, on this risk to the extent that risk was taken based on false representations that could be demonstrated or shown. But at this point in time it doesn't appear to even be a full contractual breach that is ripe for litigation. But to the extent that it is, this case can accelerate discovery in this case and can move this case along on an expedited basis, expedited discovery necessary. But at this point it would not be appropriate to affect this deal which is offering that is scheduled to close within two business days based on the allegations that the plaintiffs are making against the defendant and awarding that is not appropriate to award preliminarily relief that the plaintiffs are requesting.

So, for those reasons based on those reasons and the standards applied to temporary restraining order injunctive relief, I find the plaintiff has not meant to obtain a relief, the requested relief that they seek and so therefore, I am going to deny that application.

MR. KURTZ: I think we --

THE COURT: If we don't have a date to move to this case forward I will make sure that we have a date and an earlier date necessary so that we can proceed expeditiously with that case. If it turns out at any point in time that some sort of temporary relief is appropriate, then that application can be renewed.

MS. APPS: Thank you, your Honor.

THE COURT: That is the ruling of the Court.

MR. KURTZ: Thank you very much, your Honor.

(Adjourned)